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PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of

Tetsuya BONO

Group Art Unit: 1793

Application No.: 10/566,385

Examiner: J. WOOD

Filed: January 30, 2006

Docket No.: 126308

For: FUEL CELL SYSTEM AND GAS CONTROL METHOD

RESPONSE TO RESTRICTION REQUIREMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In reply to the May 27, 2009 Restriction Requirement, Applicant provisionally elects Group I, claims 1-8, with traverse.

According to Chapters 10.7 and 10.8 of the ISPE (*International Search and Preliminary Examination Guidelines*), a lack of unity of invention may only be determined *a posteriori*, or in other words, after a search of the prior art has been conducted and it is established that all the elements of the independent claim are known.

The Restriction Requirement does not establish that each and every element of independent claims 1 and 9 is known in the prior art. Therefore, Applicant respectfully submits that lack of unity of invention has not been established, and thus a restriction requirement at this time is improper.

It is also respectfully submitted that the subject matter of all claims is sufficiently related that a thorough search for the subject matter of any one Group of claims would encompass a search for the subject matter of the remaining claims. Thus, it is respectfully

submitted that the search and examination of the entire application could be made without serious burden. See MPEP §803 in which it is stated that "if the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions" (emphasis added). It is respectfully submitted that this policy should apply in the present application in order to avoid unnecessary delay and expense to Applicants and duplicative examination by the Patent Office.

Thus, withdrawal of the Restriction Requirement is respectfully requested.

Respectfully submitted,



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JAO:LXF/tqs

Date: June 29, 2009

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